

SMALL BUSINESS IMPACT STATEMENT LCB R065-14

Revised February 5, 2015

LCB File No. R065-14 Small Business Impact Statement pursuant to NRS 233B.0608:

(a) A description of the manner in which comment was solicited from affected small business, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

A workshop notice was posted on November 19, 2013 on the Real Estate Division's (Division) website and distributed through the Division's posting list which includes industry associations and members who might be interested. The notice of workshop was for proposed regulation Agency Draft Unassigned File# 116-31085 and scheduled for December 3, 2013. The draft of the proposed language was available as a handout for all in attendance to review and on the Division's website.

One representative of a homeowner association stated that the proposed regulation sets forth an entire new concept of how mailing should be calculated, increases the required specificity of individualized hearing letters and requires that the association list names and addresses of people sitting on the hearing board. It was also stated that the proposed regulation complicates the noticing process and goes beyond what the Legislature approved during session.

A community manager commented that the proposed regulation was in conflict with NRS 116.31031 which requires that the mailing go to the property address and any other mailing address provided by the record owner. The community manager objected to certified mailings and stated that certified mailing has been discussed at the legislative level and legislators have always understood what a burden certified mailings are on associations.

A homeowner provided public comment in favor of the proposed regulation because it provides useful information and process for homeowners accused of violating governing document.

A second homeowner commented that he is in favor of all due process.

Another community manager commented that costs of many of the items within the proposed regulation will be prohibitive to small associations.

A third community manager commented that there are many associations that do not have enough money to send out dozens or hundreds of certified letters, the thirty day notice of a hearing is excessive and that the proposed regulation does not address health and safety violation hearings.

A fourth community manager commented on the thirty day notice and hoped that the Commission for Common-Interest Communities and Condominium Hotels (Commission) would consider NRS 116.31031 as it might contradict with other notice dates in statute.

A fifth community manager questioned giving out the names and addresses of hearing panel or board members and stated this is a privacy and safety issue.

Another representative of a homeowner association board commented against giving names and addresses of hearing panel members stating that it could make it impossible to get people to volunteer to be on a hearing panel.

The Commission directed the Division to send the proposed language to the Legislative Counsel Bureau to receive a file number. The proposed regulation became LCB File No. R065-14.

Interested persons may obtain a copy of the small business impact statement or submit statements of impact to:

Teralyn Thompson, Administration Section Manager
Nevada Real Estate Division
2501 East Sahara Avenue, Suite 303
Las Vegas, NV 89104
tlthompson@red.state.nv.us
702-486-4036

(b) The manner in which the small business analysis was conducted for LCB File No. R065-14.

The Division posted the proposed draft regulation on the Division's website and distributed through the Division's posting list which includes industry associations and members who might be interested. The Commission had discussion at a public meeting and sought public comment at the meeting scheduled December 3-4, 2013.

(c) The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

(1) Both adverse and beneficial effects:

- (I) Adverse effects:** Homeowner association representatives and community managers commented on how Section 2(2) of the proposed regulation regarding sending the notice at least 30 days prior to a hearing by certified mail would be costly and burdensome on an association especially if a homeowner exercises Section 2(3); is granted a continuance and must be re-noticed.

Another adverse effect in Section 2(1)(g) regarding the names of members of the hearing committee who will conduct the hearing. This might deter homeowners from volunteering to be on a hearing committee.

Section 6(1) contradicts NRS 116.31083(7) regarding audio recordings during executive session.

- (II) Beneficial effects:** Homeowners find the proposed regulation beneficial because it provides useful information and a process for homeowners accused of violating association governing documents.

(2) Both direct and indirect effects.

- (I) Direct effect:** Requiring a thirty day notice sent by certified mail could be costly and time consuming to homeowner associations. Section 6(1) contradicts existing statute.

- (II) Indirect effect:** Requiring hearing panel members' names to be disclosed to the respondent could lead to intimidation or retaliatory action. This might make it difficult to find homeowners to volunteer to serve on a hearing panel.

Section 7 allows for the aggrieved person to submit the action to mediation or referral to a program of dispute resolution pursuant to NRS 38.320. There is not a limit of time placed on the mediation allowing the alleged violation to continue.

(d) A description of the methods that the Real Estate Division considered to reduce the impact of LCB File No. R065-14 on small businesses and a statement whether the Real Estate Division actually used any part of those methods.

The Division has not considered a method to reduce the impact of LCB File No. R065-14 on small businesses at this time.

(e) The estimated cost to the agency for enforcement of the proposed regulation.

There is no cost to the agency for enforcement of the proposed regulation.

(f) If LCB File No. R065-14 provides a new fee or increases an existing fee, the total annual amount the Real Estate Division expects to collect and the manner in which the money will be used.

LCB File No. R065-14 does not provide a new fee or increase an existing fee.

(g) If LCB File No. R065-14 includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

LCB File No. R065-14 does not duplicate any existing federal, state or local standards regulating the same activity.

(h) The reasons for the conclusions of the Real Estate Division regarding the impact of LCB File No. R065-14 on small businesses.

Staff from the Division has attended the public meeting of the Commission, listened to and observed discussions and public comments. Most of the public comments submitted have been against the proposed regulation because it is onerous on associations and contradictory to current statute. Comments submitted in favor of the proposed regulation see the proposed regulation as being informational.

I certify that, to the best of my knowledge or belief, the information contained in the Small Business Impact Statement for LCB File No. R065-14 was prepared properly and is accurate.

Joseph (JD) Decker, Administrator
Department of Business & Industry
Real Estate Division

NRS 233B.0608(3) Statement

- 1. Identify the methods used by the agency in determining the impact of the proposed regulation on a small business.**

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- 2. Identify the reasons for the conclusions of the agency concerning the impact of the proposed regulation on a small business.**

Staff from the Division has attended the public meeting of the Commission, listened to and observed discussions and public comments. Most of the public comments submitted have been against the proposed regulation because it is onerous on associations and contradictory to current statute. Comments submitted in favor of the proposed regulation see the proposed regulation as being informational.

I certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in this statement is accurate. (NRS 233B.0608(3))

Joseph (JD) Decker, Administrator
Department of Business & Industry
Real Estate Division